

March 21, 2022

Planning Commission  
Kasson Township  
P.O. Box 62  
Maple City, MI 49664

Re: Lively Holdings, LLC Special Use Permit review

Dear Planning Commission Members:

This letter is response to the Special Use Applicant Jim Lively correspondence to the Planning Commission, dated March 18, 2022.

The proposed Special Use Permit includes the following language:

No outdoor (or indoor) amplified music is allowed other than for the three large outdoor concert events identified previously.

No combined- group acoustic music is allowed on the Property. This means acoustic music generated by a one or more musicians and intended for a collective audience including multiple members of the public at large and/or multiple campers on common areas of the Property. This restriction does not prohibit the use of a single acoustic instrument, such as a guitar, within and for an individual campsite.

The applicant wants this language removed from the Special Use Permit (“SUP”).

This language should remain for the following reasons:

The applicant’s initial overall project summary, attached to this letter as **Exhibit A**, presented to the PC in the early Summer of 2021, *included an Indoor Theater which would have amplified music*. There were other indoor/outdoor meeting/community components of the project that included weddings, parties, and large gatherings with noise/music potential.

The applicant's summary did divide the plan into two phases, but it was the understanding of Tim Cypher and I, and of the PC as well to my knowledge, that the applicant was seeking a *unified review and approval of both Phase 1 and Phase 2 under one SUP last Summer*.

In addition, on page 4 of the summary, the applicant proposed an *85dB (decibel)* maximum level at the *lot line* for every amplified event.

Given these aspects of the project, and this proposed *85 dB level, at the lot line*, it was my strong recommendation that the Township engage a professional sound engineer to review the sound aspects of the project before any approvals were given for either indoor or outdoor events where either amplified music, acoustic bands, or other sources of noise could occur. Toward that end, the Township Board approved the engagement of the Kolano and Saha Sound Engineering Firm (Darren Brown, P.E.) of Waterford, Michigan and the applicant was required to post a sizeable escrow deposit (\$3,500) for that sound work.

As the PC's meeting of July 19, 2021 approached, where the PC was expected to grant approvals of at least some aspects of the applicant's project, the sound engineering work, which would include on-site testing and demonstrations, *had not yet occurred*. In that context, the Sound Engineer Darren Brown emailed a letter, dated July 16, 2021, which *recommended against approvals* involving either amplified or acoustic group music:

As these evaluations of community noise are significant to how the Lively Festival Grounds are used, it would be practical to wait on the results of our findings before any approvals of use regarding the generation of sound, including, acoustical performances, are granted. [Emphases added]

Mr. Brown's letter is attached as **Exhibit B**. I wrote a letter, also dated July 16, 2021, **Exhibit C**, that echoed Mr. Brown's recommendation which included this text:

It is within this context, *of avoiding harm and nuisances to neighboring properties and the community*, that the PC authorized the hiring of an independent sound engineer, Darren Brown of Kolano and Saha, to address the

potential sound and noise (nuisance) issues associated with the following general categories of uses: 1) the continuation of the three large outdoor festivals 2) amplified music associated with the indoor event facility and 3) acoustic music and other sounds associated with more general outdoor gatherings (which would include “public and semi-public gatherings). [original emphasis]

The sound engineer has not yet conducted on-site testing and a report, and for that reason, no special land use approvals, either temporary or permanent, for any of the above uses, should be granted until Mr. Brown’s work has been completed. [Emphasis Added]

My recommendation is that the approvals be confined to the camp site expansion and to the outdoor retail store at this time.

The PC’s Minutes, page 5 of 11, of July 19, 2021, **Exhibit D**, show the *PC accepted all of the foregoing recommendations* with respect to both amplified and acoustic music and agreed to *prohibit* that music absent the sound engineering. See excerpt below:

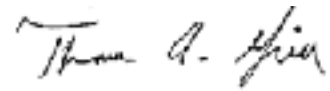
Section 7.8 Conditions and Safeguards— Cypher advised the easement access to Phase Two is going to be taken off the permits as there is an issue whether the dirt road is an easement as it is not listed on the deed. Chair Otto advised planning commissioners to adopt the attorney recommendations with Lively having an issue with number 12 of prohibiting acoustic music. Discussion followed whether to keep the attorney’s recommendation of prohibiting acoustic music. All planning commission members agreed to keep all of the attorney’s recommendations. The planning commissioners agreed that any changes can be made once the sound engineer’s report is received.

On September 14, 2021, Tim Cypher shared the following email with me, **Exhibit E**, where the applicant withdrew Phase 2 of the SUP from further consideration. Because the applicant withdrew Phase 2 from further consideration, there was no need for the Sound Engineer’s work and Mr. Lively was later refunded the majority of his \$3,500 escrow deposit for the sound work. As a result, the sound engineering has yet to occur.

In summary, 1) given the applicant’s withdrawal of Phase 2, 2) given the absence of any sound engineering work because of that withdrawal, and 3) given the PC’s language in the July 19, 2021 Minutes, it is clear that the PC *intended to prohibit both*

*amplified music and group acoustic music under Phase 1* of the project. That should be stated in the SUP.

Sincerely,

A handwritten signature in cursive script, reading "Thomas A. Grier".

Thomas A. Grier

cc: Tim Cypher, Greg Julian and Dana Boomer